

CONTRACTUAL ARBITRATION

In the Matter of the Arbitration Between

Claimant

— and —

Respondents

~~ORDER SUPPLEMENTAL TO AWARD~~

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having duly heard the proofs and allegations of the parties, hereby render the following Order Supplemental to Award in the above-entitled arbitration:

It appearing that on July 26, 1999, claimant, through his attorney of record, offered in writing to settle and compromise the above matter against all respondents upon payment of the sum of \$249,000, and that said offer was not accepted, and that thereafter claimant was awarded the sum of \$265,000, and that claimant has now moved for award of interest pursuant to Civil Code § 3291 and payment for the services of expert witnesses pursuant Code of Civil Procedure § 998, subdivision (d),

Upon consideration of the evidence and the arguments of counsel, and the matter having been submitted, the undersigned arbitrators hereby render the following Order Supplemental to Award:

1. Claimant shall not recover interest on the Award. Civil Code § 3291 does not expressly refer to arbitrations, and as expressly held in *Woodard v. Southern California Permanente Medical Group* (1985) 171 Cal.App.3d 656, 666. "... we are forced to conclude that section 998 and Civil Code section 3291 do not apply to arbitration." (Emphasis added.) CCP § 998 was subsequently amended to be applicable to arbitrations, at least after its effective date, but no such change was made as to Civil Code § 3291. *Woodard* has never been overruled and governs the award of interest in this case.

2. Claimant shall not recover payment for the services of expert witnesses. Although Code of Civil Procedure § 998, subdivision (d), now makes such payment discretionary following an arbitration award in excess of a claimant's pre-trial offer, the

by which the parties are bound, provides that

... each party is responsible for paying its own attorney fees, witness fees and other expenses incurred in prosecuting or defending against a claim regardless of the nature of the claim or outcome of the litigation. No party shall be entitled to recover any costs under any provision of the Code of Civil Procedure, or amendments thereto. (Emphasis added.)

In view of the content of the _____ we need not discuss the applicability of current section 998 to contracts entered into prior to the effective date of the amendments, nor the exercise of arbitral discretion.

Date

May 11, 2000

May 10, 2000

May 15, 2000

Arbitrator

Steven Glickman

Alan L. Rushfeldt

George M. Dell

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of Arbitration Between _____

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, AWARD as follows:

1. The Claimant _____ is entitled to the sum of \$450.00 without interest from the Respondent, _____
2. The fees and expenses of the American Arbitration Association totaling \$500.00 shall be borne by the Respondent, _____
3. Therefore, Respondent, _____ shall pay to Claimant, _____ the total sum of NINE HUNDRED and FIFTY DOLLARS (\$950.00).


Pursuant to the request of the Respondent for a REASONED AWARD, I find the following:

- a) I find the professional opinions of the patient's dentist, I _____ as set forth in his July 7, 1999 written statement, to be more persuasive than those of the Respondent's expert - by reason of _____; in-person physical examination of the patient's teeth (including the determination as to whether the lines on the patient's tooth are craze lines or fracture lines;
- b) It was reasonable for _____ to conclude that the tooth's integrity should not be jeopardized by the placement of too large a filling into insufficient tooth structure since to do so would create a risk of damage that might not later be readily curable by use of a crown;
- c) There was no evidence provided as to what dentist did the fillings on adjacent tooth #30 or opposing tooth #2, how long those fillings have been 'in place', how 'successful' those fillings have been, etc. Therefore, the Respondent's citation to them as possible analogues for a similar use of a filling for tooth #31 is not persuasive.

This Award is in full settlement of all claims and counterclaims submitted to this arbitration.

DATE: _____

April 10, 2000


Alan Stamm, Esq., Arbitrator